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No. 564

IN THE

Supreme Court of the United States

October Term, 1965

THE DURIRON COMPANY, INC. Plaintiffs

v.

CHARLES STEPHENSON, NORMAN BAKKE, Et Al.,
Respondents

REPLY TO WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA

THEODORE M. STEVENS
8258 8th Avenue
Anchorage, Alaska

Of Counsel:

JOHN M. SAVAGE
825 8th Avenue
Anchorage, Alaska

Color Art Printing Company, Inc., Legal Printers, Anchorage, Alaska

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To The Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Respondent, Stephenson, respectfully requests that petioner's prayer for Writ of Certiorari be denied.

Color Art Printing Company, Inc., Legal Printers, Anchorage, Alaska

I

QUESTION PRESENTED

This case was initiated in the State of Alaska as an action in tort and a breach of Warranty. Petitioner, an Ohio manufacturer of pipes and valves initiated and carried on a series of continuous contacts in the State of Alaska of a business nature sufficient under the "minimum contacts doctrine" of International Shoe Co., v. Washington, 326 U.S. 310 (1945) to allow the Courts of Alaska to exercise personal jurisdiction over them in this action.

II

STATEMENT OF THE CASE

On March 16, 1962 the Respondent Stephenson switched on a light in his apartment which set off an explosion of escaped gas. The apartment house burned to the ground. Respondents sued for personal injuries and property damage caused by the explosion and fire. The number of defendants was expanded until it included the supplier of the gas, the supervisors and contractors who installed the pipeline and the manufacturer of the allegedly defective valve.

This petition concerns only the defendant The Duriron Company, Inc., manufacturer of the valve claimed to have permitted the gas leak which caused the explosion.

Duriron is a New York corporation with headquarters in Dayton, Ohio, and is engaged in the manufacture and sale of corrosion resistant iron alloy pipes and fittings. Duriron products are distributed throughout the United

States by the use of district sales offices, manufacturer's representatives and plumbing jobbers. It is not authorized to transact business in Alaska and does not have and never has had a registered agent in the state for receipt of service of process. No agent of Duriron has ever entered the territory of State of Alaska to solicit and consummate the sale of any Duriron product.

Duriron's products found their way into Alaska in undetermined quantities by various methods. One effective method was through the efforts of Duriron's manufacturer's representative, John T. Doherty & Associates of Seattle. Doherty sent catalogs of Duriron products, printed by Duriron but stamped with Doherty's name, to engineers, architects and plumbers in Alaska. Doherty also sent quotations on any particular job to two Anchorage jobbers, Yukon Supply Company and Susitna Plumbing and Heating. Orders from these sources were sent to Doherty, who forwarded them to Duriron for approval. Upon acceptance a commission was paid to Doherty. Although subsequent in time to the facts which created the issue before us, it does appear from the record that since August of 1963 John Doherty Company has apparently followed the practice of sending a sales representative to Alaska to represent Doherty in selling Duriron products in Alaska.

The record reveals that on a number of occasions Delta Engineering Corporation of Houston, Texas, acting as an independent contractor, sent its purchase orders to salesmen of Duriron in Houston, for products offered for sale by Duriron, for Shipment to Delta in care of Anchorage Natural Gas Corporation, Anchorage, Alaska; that Duriron would ship the merchandise from Dayton, Ohio to Delta in accordance with instructions, and that payment would thereafter be made to Duriron by Delta.

Vinson Supply Company of Houston, Texas, acting as an independent contractor, on several occasions during 1960, 1961 and 1962, mailed written purchase orders from Houston to salesmen of Duriron also located in Houston, for Duriron productes; that Duriron would ship the merchandise from Dayton to Delta Engineering Company in Alaska pursuant to instructions contained in the purchase orders and that the purchase price would thereafter be paid by check from Vinson to Duriron in Dayton.

In April of 1962 and again in March of 1963 Anchorage Natural Gas Corporation ordered merchandise from Duriron directly. These orders were accepted by Duriron. The merchandise was shipped to Anchorage Natural Gas Corporation at Anchorage and remittance was made by the gas corporation to Duriron at Dayton. On the other hand, Duriron refused to accept one order for merchandise mailed by Anchorage Natural Gas Corporation to Duriron in July of 1962.

Duriron summarizes those sales of its merchandise which are known to have reached Alaska in the years preceding the filing of this suit as follows:

In 1958 three Seattle companies purchased products from Duriron costing $5,602.84, and either shipped or caused Duriron to ship the products to a business in Alaska.

In 1959 four Seattle companies purchased products from Duriron costing $982.07, and either shipped or requested Duriron to ship the products to Alaska. In addition, in 1959, Duriron filled orders received directly from one Alaska company and a United States Air Force facility totaling $5,899.75.

In 1960, Seattle and Houston companies made purchases from Duriron totaling $14,717.49, and shipped or requested that Duriron ship the products to a business in Alaska. Also in 1960 one company and a United States Air Force facility made purchases from Duriron totaling $529.32.

In 1961 Seattle, Tulsa and Houston companies made purchases from Duriron totaling $7,404.30, and shipped or requested Duriron to ship the products to Alaska.

In 1962 Houston and Seattle companies made purchases totaling $3,627.06 from Duriron, and shipped or requested that Duriron ship the products to a business in Alaska. Also, in 1962 Duriron filled one unsolicited order received direct from a company in Alaska totaling $630.64.

During the above years Duriron's total gross annual sales in all areas of the world varied between twelve and seventeen million dollars.

It seems agreed that the valve involved in this action arrived in Alaska after Delta Engineering Company, a Texas Corporation acting as agent for Anchorage Natural Gas Corporation, had ordered it along with other merchandise from Vinson Supply Company, also of Texas. Acting as an independent contractor, Vinson had ordered the valve from Duriron for resale. The invoices reveal that the products were to be sent by Duriron directly to Anchorage Natural Gas Corporation in Anchorage.

Since March of 1962 Duriron has maintained a branch office in Seattle, Washington, to serve a sales district covering northwest states. This sales district was expanded to include Alaska on January 1, 1963.

Although Petitioner indicates that the facts are not in dispute, he proceeds to interpret those facts in a percentage of total business of The Duriron Corporation contrary to the facts which give rise to jurisdiction. The Supreme Court of Alaska specifically rejected the percentage statistical comparison as misleading and quotes the actual business figures of the Duriron Company as revealed in the transcript. Respondent adopts the statement of these facts as his own.

III

REASONS FOR DENYING THE WRIT

1. THE ALASKA SUPREME COURT HAS DECIDED THE PERSONAL JURISDICTION OVER THE DURIRON COMPANY, INC., IN A MANNER CONSISTENT WITH THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND THE APPLICABLE DECISIONS OF THIS COURT.

Since the decision of this Court in Pennoyer v. Neff, 95 U.S. 714, 24 L.ed. 565 (1878) the power of state courts to exert jurisdiction over foreign corporations has been steadily expanded. Justice Stone, speaking for this Court in International Shoe Co., v. State of Washington, 326 U.S. 210, 90 L.ed. 95 (1945) laid down the major part of the new standards by which personal jurisdiction over non-resident foreign corporations was to be determined.

> "But now the *capias ad respondendem* has given way to personal service of summons or other form of notice, due process requires only that in order to subject a defendant to a judgment in personum; if he is not present within the territory of the forum, he have

> certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice."

Justice Stone then discusses the types of activities that have or have not been held by the Court to satisfy jurisdictional requirements of "presence", "continuous activity sufficint to impose liability" and citing the cases in which these tests were used. Analyzing these cases Justice Stone put these old tests into focus with the new one.

> "It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative. The test is not merely, as has sometimes been suggested, whether the activity, which the corporation has seen fit to procure through its agents in another state, is a little more or a little less. (Citing Cases) Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make finding a judgment in personum against an individual or corporate defendant with which the state has no contacts, ties, or relations. (Citing Cases)"

These tests were applied in McGee v. International Life Insurance Co., 355 U.S. 220- 2L. ed-2d 223 (1957). This Court held that a single contract of insurance made in California by mail with a California resident was "of such a quality and nature of activity in relation to the fair and orderly administration of the laws" of that state to submit the foreign corporation to the jurisdiction of that state. (California had a statute which provided a

California ctiizen with a forum and a remedy to enforce whatever substantive rights its citizens might have against such a foreign corporation). This holding then, gave a clasic illustration of the International Shoe Co. doctrine by holding that an insurance contract was of such a nature and quality as to qualify as a "minimum contract" consistent with the due process clause to bring the non-resident corporation to bar in the plaintiff's forum state.

In Perkins v. Beguet Consolidated Mining Co. 342 U.S. 437, 96 Led. 485 (1952), a case involving a Philippine Corporation whose activities had been halted by the Second World War, this Court held that where the president of the corporation, who was also general manager and principal stockholder, maintained a corporation office in his home in Ohio from which he transacted corporate business with the assistance of two secretaries; substantial corporate accounts were maintained in Ohio banks; but no corporate business was carried on that concerned any corporate property in Ohio; federal due process would not be violated for Ohio either to take or decline jurisdiction of the corporation where the president had been personally served in Ohio.

This decision necessarily gives a large amount of discretion in assuming or denying jurisdiction to state courts. The limits of federal due process are to be observed consistent with the doctrines in International Shoe Co., Supra, but with a mandate to the state courts to establish the limits of their own jurisdiction consistent with the broad formulae laid down in that case.

In Hanson vs. Denkla, 357 U.S. 235, 2Led. 2d 1283 (1958) this Court again applied the test of jurisdiction set down in International Shoe Co., Supra to the facts

of the case and said:

> "In *McGee* the court noticed the trend of expanding personal jurisdiction over non residents. . . . But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on personal jurisdiction of state courts. (Citing cases) Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation, they are a consequence of territorial limitation on the power of the respective states. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that state that are prerequisite to its exercise or power over him. See: *International Shoe Co. v. State of Washington,* 326 U.S. 310-319, 66 S. Ct. 154-159, 90 L. ed 95. We fail to find such contacts in the circumstances of this case. The defendant trust company has no office in Florida and transacts no business there. None of the trust assets has ever been held or administered in Florida, and the record discloses no solicitation of business in that state either in person or by mail."

Hanson thus applied International Shoe to the facts to see if "minimal contacts" had been made. This same doctrine was applied in McGee and Perkins and was exactly the same process followed by the Alaska Supreme Court in this case. In Stephenson, et al vs. Duriron Co., Inc., et al, 401 P2d 423 (Alaska 1965), the Alaska Supreme Court first reviewed the facts of the activity of Duriron Co., in Alaska. (See Pet. Appendix, page 4A, 5A, 6A, Respondent Br. Page 3 or 4.) Petitioners dismiss the application of the International Shoe Co. doctrine against these facts by saying

> "Against the requirements stated in the decisions of this Court, the Supreme Court of Alaska could never have based its findings on the inconsequential activities of Petitioner as shown on the record."

On the contrary, the Alaska Supreme Court began its consideration of this case with a review of the relevant facts from the whole record. It then reviewed the applicable law as set down in the decisions of this Court. Petitioner issues his claim of "inconsequential activities" upon a statistical analysis of the total business of The Duriron Co. in the United States. The state court, quoting the recent decision of Gray v. American Radiator and Standard Sanitary Corporation 22 ILL, 2d 432, N. E2d 761 (1961), rejects this statistical analysis of petitioner's contacts with Alaska and elects to review the facts of the actual contacts as summarized by Duriron Co., itself (Pet. Br. Page 5a). Justice Stone in the International Shoe Co. Case, Supra gave similar short shrift to the statistical analysis saying:

> "It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative. The test is not merely, as has sometimes been suggested, whether the activity which the corporation has seen fit to procure through its agents in another state, as a *little more or a little less.*" (*emphasis added.*)

The Alaska Supreme Court rightly rejects petitioner's attempt to minimize its activities in favor of a full investigation of the facts of the actual contacts with Alaska. The International Shoe Co., doctrine (see Page 12 a Pet. Brief), is then applied to these facts to determine if the "nature and quality of the activity" revealed in these facts "in relationship to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure" justifies asserting in personum jurisdiction over the foreign corporation. Be rejecting

the "little more or little less" statistical analysis as faulty and misleading, and analyzing the actual "nature and quality" test, the Alaska Supreme Court ruled on its analysis that minimal contacts had been established.

Petitioner has complainel that the Alaska Supreme Court specifically ignored the requirement in Hanson vs. Denkla. Supra that the foreign corporation "do some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." The Alaska Supreme Court considered the evidence (See Pet. Br. page 11 a-12a) and concluded that the Duriron Co., Inc., had "of its own knowledge, been satisfying practically every order directed to it either directly or indirectly from the Alaska market." (Pet. Br. page 11a) Catalogs of Duriron's products were circulated by their manufacturer's representatives, such as John T. Doherty, generated much Alaska business, and since March, 1962, Duriron has maintained a branch office in Seattle, Washington, to serve a sales district covering several northwest states. On January 1, 1963, this district was expanded to include Alaska (Pet. Br. page 6a). Considering all of these facts, the Alaska Supreme court concluded,

> "Under these facts we hold that Duriron did derive a benefit from the laws of Alaska which provided a business climate and market demand for its industrial products and which were otherwise available to it for any purpose for which they might be required."

Petitioner has denied that Duriron ever solicited business directly from Alaska. The facts show, however, that Duriron did several acts that clearly shows its intention to do business in Alaska. It is interesting to note

that only one order was ever refused from any source, and that one order wa ssubmitted immediately after this suit was filed. The Alaska Supreme Court properly considered the question and concluded the evidence justified the exercise of jurisdiction.

Petitioner assumes that the Alaska Supreme Court based its opioion upon the special facts of the McGee Case. It has been demonstrated that this is just not so. Petitioner himself says in his petition that this case was initiated by respondent for personal injuries and property damage caused by an alleged explosion of escaped gas. Case. It has been demonstrated that this is just not so. (Pet. Br. page 4) Questions Presented. Pet. Br. page 2 says: "This case was initiated in the State of Alaska as an action grounded in tort." Although McGee, Supra is a liberal interpretation of the International Shoe Co., doctrine, it clearly is distinguishable from the tort actions since its contact is grounded in contract. That one who commits a tort in a state can be held responsible in that state was settled long ago. Hess vs Pawloski, 274 U.S. 352, 71 L. ed 1091; Young vs. Masci, 289, U.S. 253. Plaintiff is suing in tort for his injuries and damages, not in contract. Both theories may be present in a single action to place petitioner within the jurisdiction under the minimal contact theory, but either is sufficient to bring the corporation into the minimum contact in the state necessary to exercise that state's jurisdiction. Petitioner perceives this as a contract case and proceeds to ditinguish it on that basis. The actual case is grounded upon petitioner's tort in the negligent manufacture and circulation of a dangerous product (i.e. a defective natural gas valve) to the respondent's damage. Nelson v. Miller, 11 111. 2 378, 143 N.E. 2d 67-3, (1957), Gray v. American

Radistor and Standard Sanitary Corporation, 22 1112 432.176 N.E. 2nd 761 (1961).

The attempt to distinguish this case on the basis of McGee Supra, and narrow the jurisdictional act down to the single contract involving the valve as the basis for jurisdiction ignores the other intentional contacts established by the facts. Duriron's activities in the state as a whole are the activities considered in a jurisdictional claim, not the special contacts having specific applicability to cause of action itself. The case of O'Brien v. Comstock Foods, Inc., 123 Vt. 461, 194 A.2d 568, decided that an allegation that a can of beans placed in "the stream of commerce" without the specific knowledge of the manufacturer that it was destined for a specific state, does not satisfy due process under the Hanson v. Denkla doctrine which requires an "intentional and affirmative act in the State on the part of the non-resident corporation" for the State to assert jurisdiction over it.

The Court, further said in analysis of the facts of the case:

> "A single act, purposefully performed here will put the actor within the reach of the sovereignty of this state as in the *Smyth Case*. So will active participation in the Vermont market, either by direct shipment, or by way of transmittal through regular distribution presently serving the Vermont Marketing area."

Based upon the total activities of Duriron Co., in the State of Alaska, the Alaska Supreme Court made such a requisite finding. (Pet. Br. P.13a) Petitioners attempt to limit the case to the transaction of the defective valve in question and distinguish this case on the basis of the McGee and Hanson cases ignores the real basis of the

action in tort and the line of authorities that allows a state to exercise jurisdiction over non-resident corporation for such an act.

The New York Appeals Court gives the line of authority an even farther reach than does the State of Alaska. In Singer v. Walker, 250 N. Y. d 216, (NY APP, 1964) a rock hammer placed in commerce with a misleading label (unbreakable) was purchased by the plaintiff's aunt from a retailer, who had purchased from a wholesaler not the manufacturer; given to a 10 year old nephew, who took the hammer to Connecticut; and was there injured by it when it broke. Disregarding the fact that the injury occurred outside of New York, the Court said

> "Of paramount importance, no doubt, is the fact that an instrument dangerous to human life and health, if defective is involved. Due process considerations would undoubtedly be more restrictive if there involved a simple dispute of commercial dimensions between parties to a commercial contract. Where one introduces into a state a dangerous instrument the expectation of responsibility should be greater. Of little consequence, except, perhaps, for purposes of determining the applicable conflict of law rule, is the fact that a cause of action in the traditional sense arose in Connecticut. Whatever it was that defendant corporation did, it did not only the State of Connecticut, but it did the same in the State of New York. Once it is found that a tortious act occurred in this state, it is only reasonable that the actor should be responsible in New York to its residents with respect to any cause of action arising from such activity.

The Alaska Supreme Court, under the International Shoe doctrine found that Duriron Co., had the minimal contracts from the facts in the case and it would be no denial of due process to hold Duriron to account for its actions in the State of Alaska.

Petitioner admits that the recitation of the "Forum Non-Convenience" facts favors trial of the action in Alaska. (Pet. Br. 14a) and the Alaska Supreme Court did so find. (Pet. Br. 13a-14a) This is one of the factors in deciding personal jurisdiction over a foreign corporation (Pet. Br. p 13a footnote 19) and was so treated by the Alaska Supreme Court. That it was only an additive factor is made plain by the fact that the actual ruling on "minimal contracts" was made before, not after the consideration of the estimate of the inconvenience. (Pet. Br. P. 13a) It is not the determintive test, was not made so by Alaska Supreme Court, and was correctly used by them as an added factor in reaching their decision. The opinion is consistent with traditional notions of fair play and substantial justice and manifestly in its application of the International Shoe Co., doctrine does not violate the "Due Process Clause" of the 14 Amendment of the United States Constitution.

2. DUE PROCESS REQUIREMENTS AS SET DOWN BY THIS COURT'S DECISIONS ARE PLAIN AND UNEQUIVOCAL. NO PRESSING PUBLIC POLICY HAS BEEN DEMONSTRATED BY PETITIONER TO ENLARGE ON THOSE REQUIREMENTS.

Petitioner cites in his footnotes a great many cases for the proposition that the decisions of the State Courts are confusing, that a bewildering variety of standards have resulted and that in the field of tort, there is a growing abuse of due process.

Petitioner digests these cases without attempting to set out how they offend due process, merely making the assumption that the different results and tests reached in each case, because they are different, is reason enough to assume that the cases are violative of due process.

Without analyzing each cases' facts from the standard of "the nature and quality of the acts of the foreign corporation" laid down in International Shoe Co., Supra., such an assumption does not seem warranted to the Respondent.

Is it to be the role of this Court, as Petitioner seems to suggest, to assume the task of further laying out the exact and precise guidelines of jurisdiction? Respondent believes that this Court has already answered this question. All of the cases cited follow the applicable rules and decisions set down by this Court. The conclusions in these cases are derived from the special facts in each particular case. The decisions are not uniform, but on the fact differences of contact, can they be expected to be uniform? The energetic ingenuity of American businessmen in designing further methods to insure economic benefits within a state without incurring the price for the participation in those benefits, constantly presents a changing kaleidescope of new and novel fact situations to the Courts for adjudication. Respondent submits that this process is normal and natural in the law and, contemplated when this Court decided to apply a flexible rule to the questions of jurisdiction.

In Blount v. Peerless Chemcals (P.R.) Inc., 316 F. 2nd 695 (CA. 2 1963), Cert. Denied, 375 U.S. 831, L. Ed 2d 62) Judge Kaufman observed:

> "One concludes from a study of the foregoing (citing authorities) that the two fundamental factors determanitive of the propriety of personal jurisdiction appear to be the nature and extent of the business activities conducted by and on behalf of the foreign corporation in the forum state and the relationship to that state and those activities of the cause of action upon which suit if founded. Thus, a corporation which

> expends money, time, and effort extensively within a state, thereby exercising the privilege of dealing with its residents, may receive considerable economic benefit. When its activities are given protection by state law, it ill behooves the corporation to complain about appearing there to litigate."

It is to be expected that under these doctrines (applied in the Blount case to deny jurisdiction) as laid down by this Court, a myriad of decisions would extend, clarify, and delineate the rules for the extension of jurisdiction on "basic notions of fair play and substantial justice."

Petitioner makes only one serious attempt to portray a conflict. He cites the apparent conflict in the State and Federal Courts over this qestion in Minnesota. In Aftanase v. Economy Baler Company, 343 F. 2nd 187 (8 Cir. 1965) Judge Blackmun considers and settles this very conflict. He very ably places the positions of the State Courts, Judge Nordbye of the Federal Court (who usually denied jurisdiction) and Judges Dononovan and Larson (who usually decided in favor of jurisdiction) and instead of reconciling the points of view, applies the International Shoe Co., Inc., doctrine to forge a binding precedent to settle the so-called conflict. The language is so clear and so much in point, in thought and execution, to the present case it is set out here to conclusively demonstrate the correctness of this case and of the approach followed.

> "We also think it is fair to say that these five Supreme Court Cases establish only general and not precise guidelines. Perhaps they purposely do no more than this. We observe, however, that, at one time or another in the opinion, three primary factors, namely, the quantity of the contacts, the nature and quality of the contacts, and the source and connection of the

cause of action with those contacts are stressed and that two others, interest of the forum state and convenience, receive mention."

The Court then goes on to apply the facts of the case as delineated above:

"In so doing, we find first, at least some quantity of contacts of Economy with Minnesota and not a single, solitary sale. Although Economy had not shipped balers by the hundreds into Minnesota, it had shipped them into the State for a number of years and on a number of occasions. Stewart himself obtained orders for three or four a year and he was not the only solicitor who promoted Economy's baler. If these sales were not "continuous and systematic" they were not isolated either. Economy also sold replacement parts for its Minnesota balers and sent brochures and parts lists into the State. A machine of this kind does not possess a wide market and, when purchased, a baler lasts about thirty years. The quantity of contacts is thus, realistically not insignificant. Second, we find an element of quality in the contacts. The baler apparently was a substantial device. It baled metal. It was powerful and contained patent possibilities of harm if negligently designed or manufactured. Economy's balers, including this particular one, were shipped by it directly into the State and directly to the customer. There was no intervening dealer. Economy knew of the balers destination and of the Minnesota identity of the purchaser. It voluntarily placed its products on the Minnesota market, derived benefit therefrom, received the protection of Minnesota laws and reasonably could have anticipated that this activity would have consequences in the State. See *Gray v. American Radiator d SS. Corp.* 22 ILL, 2d 432 176 N.E. 2d 761 766 (1961) These contacts if not so direct as those of certain other cases, are affirmative in nature. The independent solicitors actively sought sales for Economy and Economy accepted their continuing

orders. This was voluntary, affirmative economic activity of substance. See Note 43. Minn. L. Rev: 127 131-32 (1960) Third, there is a connection between Economy's obligation and its Minnesota contacts. While one may argue that the obligation did not arise from a "Tortious Act" committed by it in Minnesota, the obligation nevertheless arose in Minnesota where and when injury occurred. The baler was sold for use in Minnesota and when used there injured Aftanase, a Minnesota Resident. Fourth; Minnesota has an interest in providing a forum for an injured resident. The interest may not be so significant as in insurance cases, but it is not insignificant or absent. The fifth factor of convenience carries little persuasive weight either way.

The Supreme Court has certainly not indicated that all five of these factors must be present in substantial degree for jurisdiction to be constitutionally effected. We conclude that the use in this case of Minnesota substituted service procedure on this defendant foreign corporation is consistent with fair play and substantial justice and does not violate federal Due Process. We here have more than the minimum contacts which the Supreme Court has prescribed as the standard and we see nothing unreasonable in requiring the defense of the suit in a Minnesota Tribunal." This case does not violate any constitutional requirements, and is typical of the decision now being issued in the "trend of expanding personal jurisdiction over non-residents. As technological progress has increased the flow of commerce between States, the need for jurisdiction over non-residents has undergone a similar increase. At the same time, progress in communication and transportation has made the defense of a suit in a foreign tribunal less freedomsome. In response to these changes, the requirements for personal jurisdiction over non-residents have evoked from the rigid rule of *Pennoger v. Neff* . . . to the flexible standard of *International Shoe Co., v. Washington* . . ."

Petitioner asks the Court to do nothing less than to stop the progress in this field and rigidity the personal jurisdiction requirements so lately broken away from.

CONCLUSION

For the foregoing reasons, this Petition for Certiorari should be denied.

Respectfully submitted,

Signed.....

THEODORE STEVENS
825 W. 8th Avenue
Anchorage, Alaska
Counsel for Respondent

JOHN M. SAVAGE
825 W. 8th Avenue
Anchorage, Alaska
Counsel for Respondent